



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2010-0335; FRL-9900-82-Region6]

Approval and Promulgation of Implementation Plans;

Texas; Procedures for Stringency Determinations and Minor Permit Revisions for Federal Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final action to approve portions of three revisions to the Texas State Implementation Plan (SIP) concerning the Texas Federal Operating Permits Program. EPA has determined that these SIP revisions, submitted on December 17, 1999, October 4, 2001 and August 11, 2003, comply with the Clean Air Act and EPA regulations and are consistent with EPA policies. This action is being taken under section 110 of the Act.

DATES: This direct final rule is effective on **[Insert date 60 days from date of publication in the Federal Register]** without further notice, unless EPA receives relevant adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2010-0335, by one of the following methods:

- (1) www.regulations.gov : Follow the on-line instructions for submitting comments.
- (2) E-mail: Ms. Adina Wiley at wiley.adina@epa.gov.
- (3) Fax: Ms. Adina Wiley, Air Permits Section (6PD-R), at fax number 214-665-6762.
- (4) Mail or Delivery: Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2010-0335.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> website is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 AM and 4:30 PM weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today’s direct final action, please contact Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, Texas 75202-2733, telephone (214) 665-2115; fax number (214) 665-6762; email address wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

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I. What Action is EPA Taking?

EPA is taking a direct final action to approve portions of three revisions to the Texas State Implementation Plan (SIP) concerning the Texas Federal Operating Permits Program. EPA has determined that these SIP revisions, submitted on December 17, 1999, October 4, 2001 and

August 11, 2003, comply with the Clean Air Act and EPA regulations and are consistent with EPA policies. This action is being taken under section 110 of the Act.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. As explained in our accompanying technical support documents (TSD), we are finding this action noncontroversial because the provisions for the Stringency Determination for Federal Operating Permits at 30 TAC 101.28 have been in effect in Texas since December 23, 1999, and the minor permit revision procedures for the Texas Federal Operating Permit Program have been in effect in Texas since June 3, 2001 and December 11, 2002, without any negative impact to attainment or maintenance of any National Ambient Air Quality Standard in Texas. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication in the Federal Register] without further notice unless we receive relevant adverse comment by [FEDERAL REGISTER OFFICE: insert date 30 days from date of publication in the Federal Register]. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What did Texas Submit?

A. Stringency Determinations for Federal Operating Permits at 30 TAC 101.28

December 17, 1999 SIP Submittal

In a letter dated December 17, 1999, Governor George W. Bush submitted revisions to the Texas SIP at Rule Log No. 99017-101-AI that were adopted by the Texas Natural Resources Conservation Commission (TNRCC) on December 1, 1999, and became effective on December 23, 1999.¹ This SIP submittal included revisions to the following parts of the Texas Administrative Code, Title 30, Chapter 101:

1. Revisions to the General Air Quality Definitions at 30 TAC 101.1;
2. Revisions to Emissions Inventory Requirements at 30 TAC 101.10;
3. New provisions for Stringency Determinations for Federal Operating Permits at 30 TAC 101.28; and
4. Revisions to Conformity of General Federal and State Actions to State Implementation Plans at 30 TAC 101.30.

Today's direct final action and accompanying proposal only addresses the submittal of 30 TAC 101.28. The revisions to the General Air Quality Definitions at 30 TAC 101.1 were superceded by EPA's November 14, 2001 approval of the Definitions adopted on September 26, 2001. See 66 FR 57252. EPA approved the revisions to the Emissions Inventory Requirements at 30 TAC 101.10 and the revisions to Conformity of General Federal and State Actions to State Implementation Plans at 30 TAC 101.30 on July 23, 2010. See 75 FR 43062. This review will be

¹ Note that the Texas Natural Resource Conservation Commission (TNRCC) was a predecessor to the current Texas environmental agency, the Texas Commission on Environmental Quality. This analysis will identify the TNRCC when talking about a specific action taken by the TNRCC such as rule adoption and SIP submittal, but will generally refer to the TCEQ when discussing current duties of the state environmental agency.

the first time EPA has evaluated and taken action on the December 17, 1999, submittal of 30 TAC 101.28. TCEQ has made no revisions to 30 TAC 101.28 since the initial adoption and submittal of the regulatory language as a SIP revision.

B. Minor Permit Revisions Procedures for Federal Operating Permits Program at 30 TAC 122.215 – 122.218

The permitting provisions for minor permit revisions in the Texas Federal Operating Permits Program are found at 30 TAC 122.215 – 122.218. These provisions generally identify what permitting actions constitute a minor permit revision and detail the application procedures for said minor permit revisions under the Texas Federal Operating Permits Program. The TCEQ initially adopted the revisions at 30 TAC 122.215 – 122.218 in response to our June 7, 1995, Federal Register notice (60 FR 30037), where EPA identified several inconsistencies between Texas's Chapter 122 Federal Operating Permits Program and Part 70, including the provisions for minor permit revisions. TCEQ amended 30 TAC 122.215 – 122.218 to ensure Chapter 122 is consistent with 40 CFR 70.7(e)(2)(i). These amendments were adopted by the state on May 9, 2001, and submitted to EPA for inclusion in the Texas Title V Operating Permit program on May 30, 2001. EPA published approval of these revisions into the Federal Operating Permit program on December 6, 2001 (66 FR 63318), based on our determination that TCEQ had corrected the deficiencies identified in Chapter 122, including those pertaining to the minor permit revisions. TCEQ subsequently adopted amendments to 30 TAC 122.217 regarding minor permit procedures on November 20, 2002. These amendments removed an obsolete reference to the monitoring process for general operating permits and renumbered the section for consistency. These amendments to 30 TAC 122.217 were submitted to EPA as revisions to the Texas Title V

Operating Permit Program on December 9, 2002. EPA published approval of these revisions into the Federal Operating Permit program on March 30, 2005 (70 FR 16134).

While EPA has reviewed and approved the amendments to sections 30 TAC 122.215-122.218 into the Texas Operating Permit Program, this review marks the first time that EPA has taken action on these sections as revisions to the Texas SIP. In doing so, we are acting on the original SIP submission of October 4, 2001, and the subsequent revisions through the August 11, 2003 SIP submittal.

October 4, 2001 SIP Revision Submittal

In a letter dated October 4, 2001, Governor Rick Perry submitted revisions to the Texas SIP at Rule Log No. 2000-043-122-AI that were adopted by the TNRCC on May 9, 2001, and became effective on June 3, 2001. The following parts of the Texas Administrative Code, Title 30, Chapter 122 were submitted in this SIP submittal. Note that no other revisions were adopted or submitted to the Texas SIP in this rule package.

1. Minor permit revisions at 30 TAC 122.215,
2. Applications for Minor Permit Revisions at 30 TAC 122.216,
3. Procedures for Minor Permit Revisions at 30 TAC 122.217, and
4. Minor Permit Revision Procedures for Permit Revisions Involving the Use of Economic Incentives, Marketable Permits and Emissions Trading at 30 TAC 122.218.

August 11, 2003 SIP Revision Submittal

In a letter dated August 11, 2003, Mr. Robert J. Huston, Chairman of the TNRCC, submitted revisions to the Texas SIP at Rule Log No. 2002-056-122-AI for 30 TAC 122.217 –

Procedures for Minor Permit Revision. The revision to 30 TAC 122.217 was adopted by the TNRCC on November 20, 2002, and became effective on December 11, 2002. Note that no other revisions were adopted or submitted to the Texas SIP in this rule package.

III. EPA's Evaluation

We provide our evaluation for this rulemaking in this section. Additional information to support our evaluation is available in the TSDs for this rulemaking, which are available in the rulemaking docket.

December 17, 1999 Submittal of 30 TAC 101.28

The TCEQ adopted these provisions as a result of the guidance provided by EPA in our March 5, 1996 “White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program” (WP2). In WP2, EPA explains that EPA and the state permitting authorities have developed different and often overlapping applicable requirements for stationary source control. This results in some emissions units at stationary sources being subjected to multiple requirements – some of which may be duplicative or contradictory. To reduce the permit burden on the sources, the state permitting authorities, and the EPA Regional Offices, EPA provided guidance in WP2 on how best to streamline these multiple requirements into one requirement that is at least as stringent as the most stringent limit. Generally, the streamlined monitoring, recordkeeping, and reporting requirements would generally be those associated with the most stringent emission limit, providing that the streamlined requirements would assure compliance to the same extent as the subsumed requirements.

EPA finds that the new provisions adopted at 30 TAC 101.28 are substantively similar to the guidance provided to states in WP2. As such, the stringency determination provisions are approvable.

October 4, 2001 and August 11, 2003 Submittal of 30 TAC 122.215 – 122.218

Because of the different CAA requirements and authorizations surrounding each program, EPA generally prefers to not approve a state's Title V permitting provisions into the applicable SIP. However, there are instances where approving a portion of the Title V program into the SIP is appropriate and necessary to ensure proper functionality for both the Title I and V permitting programs. For instance, EPA approved the "potential to emit" provisions at 30 TAC 122.122 into the Texas SIP on November 14, 2003 (see 68 FR 64543). In this instance, EPA required TCEQ to revise the "potential to emit" provisions through our January 7, 2002, Notice of Deficiency of the Texas Title V program; we further required that the corrected PTE provisions be submitted as revisions to both the Texas SIP and Title V programs.

The TCEQ adopted revisions to the Texas Title V minor permit provisions at 30 TAC 122.215 – 122.218 to satisfy inconsistencies identified by EPA June 7, 1995, in the Texas part 70 program. After correcting the deficiencies and adopting revised rules at 30 TAC 122.215 – 122.218, the TCEQ has submitted and requested Title V and SIP approval. EPA has already evaluated and approved the revisions into the state's part 70 program. We now address whether these provisions should be SIP-approved.

The TCEQ has requested SIP approval because of 30 TAC 122.218; which provides that minor permit procedures may be used for emission trading programs and other similar

approaches only to the extent that such minor permit revision procedures are explicitly provided for in the Texas SIP or in the applicable requirements promulgated by the EPA.

Texas has several emissions trading programs approved into the Texas SIP, but none of these programs explicitly provide for the use of Title V minor permit revision procedures. Our analysis and approval of each of these state trading programs, found that through approval of the trading programs into the Texas SIP, these programs themselves would become applicable requirements under the approved Texas part 70 program. Since the programs themselves do not provide for the use of minor permit revisions under title V, the minor permit revision procedures in the part 70 program must be explicitly included in the SIP to ensure the Texas sources participating in the SIP-approved trading programs can use the minor permit revision mechanisms.

IV. Final Action

EPA is taking direct final action to approve revisions to the Texas SIP submitted on December 17, 1999, October 4, 2001 and August 11, 2003 as consistent with the CAA and EPA's policy and guidance. Specifically, EPA is approving new 30 TAC 101.28 as adopted on December 1, 1999 and submitted on December 17, 1999. EPA is approving revisions to 30 TAC Sections 122.215, 122.216, 122.217 and 122.218 as adopted on May 9, 2001 and submitted on October 4, 2001. EPA is also approving revisions to 30 TAC 122.217 as adopted on November 20, 2002 and submitted on August 11, 2003.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action

for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 28, 2013.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. Section 52.2270(c) is amended by adding to the table titled “EPA Approved Regulations in the Texas SIP”:

- a. A new entry in numerical order for Section 101.28 under the existing headings for Chapter 101 – General Air Quality Rules and Subchapter A – General Rules.
- b. A new centered heading at the end of the table for Subchapter C – Initial Permit Issuances, Revisions, Reopening, and Renewals under Chapter 122 Federal Operating Permits Program, followed by a new centered heading for Division 2 – Permit Revisions and new sub entries for Sections 122.215, 122.216, 122.217 and 122.218.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA Approved Regulations in the Texas SIP

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *	* *			
	Chapter 101 – General Air Quality Rules			
	Subchapter A – General Rules			

* * * * *				
Section 101.28	Stringency Determination for Federal Operating Permits	12/1/1999	[Insert date of FR publication] [Insert FR page number where document begins]	
* * * * *				
Chapter 122 – Federal Operating Permits Program				
* * * * *				
Subchapter C – Initial Permit Issuances, Revisions, Reopening, and Renewals				
Division 2 – Permit Revisions				
Section 122.215	Minor Permit Revisions	5/9/2001	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 122.216	Applications for Minor Permit Revisions	5/9/2001	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 122.217	Procedures for Minor Permit Revisions	11/20/2002	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 122.218	Minor Permit Revision Procedures for Permit Revisions Involving the Use of Economic Incentives, Marketable Permits, and Emissions Trading	5/9/2001	[Insert date of FR publication] [Insert FR page number where document begins]	

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